IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KIMBERLY BRIER, MARILYN C. LEONE, DANIEL J. LEONE, JR., NORTHERN MASSACHUSETTS TELEPHONE WORKERS CREDIT UNION, and DISCOVER FINANCIAL SERVICES, INC., Defendants.	)))))))))))))))	Civil No. 1:09-cv-11951 Judge George A. O'Toole, Jr. Magistrate Judge Marianne B. Bowler

UNOPPOSED MOTION TO DISMISS COUNT IV OF THE COMPLAINT
AND FOR ENTRY OF FINAL JUDGMENT

The plaintiff United States of America, by its undersigned attorney, moves pursuant to FED.R.CIV.P. 41(a)(2) for an order dismissing Count IV of the Complaint in the above-captioned case. In support of this motion, the United States represents as follows:

1. The United States filed this action seeking by Count I of the Complaint to reduce to judgment certain tax liabilities of Kimberly Brier, by Counts II and III of the Complaint to reduce to judgment certain tax liabilities of Marilyn Leone, and by Count IV of the Complaint to enforce its federal tax liens against the real property commonly known as 34 Russett Lane, Marlborough, Massachusetts 01752 (the “Property”), and more specifically described in the Complaint (Count IV). (Compl., docket # 1.)

2. On March 16, 2010, the Court entered judgment in favor of the United States and

against: (a) Kimberly Brier on Count I of the Complaint in the amount of $173,306.97, plus interest and other statutory additions accruing after November 1, 2009; (b) Marilyn Leone on Count II of the Complaint in the amount of $173,306.97, plus interest and other statutory additions accruing after November 1, 2009; and (c) Marilyn Leone on Count III of the Complaint in the amount of $226,107.80, plus interest and other statutory additions accruing after November 1, 2009.

3. On August 5, 2010, following entry of judgment in a previously commenced state-court foreclosure action, NMTWCU, through Bernard G. Berkman Associates, Inc., held a public auction for the sale of the Property, and ultimately purchased the Property with a credit bid in an amount less than the outstanding balance due to NMTWC.

4. Because there remains nothing for the United States to recover through the enforcement of its federal tax liens against the Property, the United States now seeks to dismiss Count IV of the Complaint.

5. If Count IV is dismissed, there will remain no further issues to be resolved in this action. Therefore, final judgment should be entered in favor of the United States and consistent with the judgment entered by the Court on March 16, 2010, and the proposed final judgment submitted with this motion.

6. The undersigned attorney spoke to Melissa Curley, counsel for Kimberly Brier, Marilyn Leone, and Daniel Leone, and to Kevin McCaughey, counsel for Northern Massachusetts Telephone Workers Credit Union regarding the relief requested in this motion, and they indicated that the defendants will not oppose this motion.

WHEREFORE, the United States of America requests that the Court enter an order dismissing Count IV of the Complaint and entering a final judgment in favor of the United States and against: (1) Kimberly Brier in the amount of $173,306.97, plus interest and other statutory additions accruing after November 1, 2009, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, as specified in 28 U.S.C. § 1961(c)(1); and (2) Marilyn Leone in the amount of $400,008.65, plus interest and other statutory additions accruing after November 1, 2009, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, as specified in 28 U.S.C. § 1961(c)(1).

JOHN DICICCO
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/s/ Andrea A. Kafka
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CERTIFICATE OF SERVICE

I certify that on May 3, 2011, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system. Registered parties may access this filing through the Court's system.

I also certify that on May 3, 2011, I sent the foregoing via United States mail, postage prepaid, to:

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